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OTHER LEGAL, INSTITUTIONAL AND RELATED MATTERS, AS WELL AS LEGAL AND INSTITUTIONAL ASPECTS OF CROSS-SECTORAL ISSUES, INCLUDING THOSE REFERRED TO WORKING GROUP III BY WORKING GROUP I, WORKING GROUP II AND THE PLENARY OF THE PREPARATORY COMMITTEE

Progress Report on Institutions

Report of the Secretary-General of the Conference

I. Introduction

1. It will be recalled that at the second session of the Preparatory Committee there was little discussion or negotiation on the contents of the report of the Secretary-General of the Conference entitled "Progress Report on Institutions" (A/CONF.151/PC/36) due primarily to the shortage of time. The contents of that report and the issues and questions raised therein remain a valid basis for the Committee's deliberations on the subject at its August session. The present report should, therefore, be regarded as an addendum to PC/36. The two papers should be considered together and the UNCED secretariat would appreciate guidance from the Committee on both.

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2. The process of forging agreement in the Prep.Com. in respect of institutions must now begin and proceed parallel with consideration of the substantive issues to be included in Agenda 21 and related financial and other Cross-Sectoral issues. Final agreement on specific institutional arrangements or rearrangements will, of course, have to await agreement by the Committee on recommendations regarding these other issues which will give rise to a number of institutional proposals. "Agenda 21" is of particular importance in this context.

3. It is equally evident that the extensive range of institutional issues raised in PC/36 and in the present report be considered by the Prep.Com. in the context of the ongoing dialogue on the structural reforms of the economic, social and related fields of the United Nations System. The UNCED decisions on the institutional implications of integrating environment and development will undoubtedly have a significant impact on the system as a whole and are bound, therefore, to greatly affect and be affected by the debate on the overall reforms.

II. Recent Developments

4. The subject of restructuring and revitalization of the United Nations in the economic, social and related fields has preoccupied the General Assembly and the ECOSOC for many years. Since 1986 in particular (following the report of the G-18) both principal organs have dealt with the subject on a continuous basis without significant results. In the latest episode the General Assembly, at its resumed forty-fifth session on 13 May 1991, adopted by consensus resolution (A/Res/45/264) on the subject. It contains basic principles and guidelines and certain measures for the restructuring and revitalization of the Economic and Social Council. Issues relating to the composition of the ECOSOC and the complex subject of the subsidiary machinery of both ECOSOC and the General Assembly, as well as the review of the secretariat, will be dealt with at future sessions of the General Assembly.

5. The Secretary-General is requested to submit a progress report on these matters to the General Assembly at its forty-seventh session (1992). The General Assembly itself is also scheduled to review in 1993 the whole subject of restructuring and revitalization of the United Nations in the economic, social and related fields. Members of the Prep.Com. will no doubt keep these timetables in mind when considering institutional aspects of UNCED.

6. The basic principles and guidelines adopted by the General Assembly in the above resolution are of direct relevance to UNCED. They can be summarized as follows:

(a) restructuring is primarily the responsibility of Member States. The Secretary-General is requested to "assist and cooperate";

(b) political will is an essential prerequisite for reform;

(c) the exercise should aim at achieving greater complementarity between the bodies and organs of the United Nations with the General Assembly;

(d) the preservation of the "democratic principles" which underfirm the decision-making process of the United Nations;

(e) the need to preserve and strengthen transparency and openness;

(f) the most efficient and effective use of the financial and human resources of the United Nations system in the economic, social and related fields;

(g) the importance of the ongoing revitalization of the ECOSOC.

III. Environment and Development Coordination

7. The continuous preoccupation of the General Assembly and ECOSOC over the years, as well as institutions outside the United Nations system, with the question of reforms of the United Nations economic and social machinery demonstrates the complexity of that structure and the growing need to streamline it and enable it to play a central role in meeting the challenges facing the international community. The integration of environment and development at all levels and throughout the United Nations system clearly represents a formidable new such challenge. As explained in paragraph 1 of PC/36, it is widely recognized that one important result of UNCED is expected to be the substantial strengthening of the mandate and capacity of UNEP, which is mandated to be the coordinator of the environmental activities of the United Nations system. The ECOSOC, under the authority of the General Assembly, on the other hand, with the secretariat support headed by the Director-General, has certain responsibilities for coordination of United Nations and United Nations system situations in relation to development. It is evident, however, that quite aside from the question of integration - in which environmental considerations are or should be taken into account in activities aimed at development goals - there is no systematic means to ensure coordination at either the intergovernmental level or the secretariat level, of different parts of the United Nations and and United Nations system that may be operating in divergent manners.

8. In recent years, a general recognition has emerged on the need for new and innovative overall arrangements to remedy these problems of coordination and provide the system with a better sense of direction, but we are far from a consensus on how this should be done. While this recognition predates the UNCED process, it is obvious that the formidable task of integrating environment and development transforms the need for such new arrangements from the realm of desirable reforms to that of an imperative and central component of sustainable development.

IV. The Intergovernmental Level

9. Most reform efforts by the General Assembly and ECOSOC have concentrated on the intergovernmental machinery, a complex area where experience thus far has shown how difficult it is to overcome certain stubborn constraints whenever changes have been attempted.

10. In addition to the ideas and suggestions contained in PC/36, a number of proposals have been advanced which are directly relevant to the possible results of and follow-up to the United Nations Conference on Environment and Development. The following is a summary of the main proposals for new or improved intergovernmental machinery which the Preparatory Committee may wish to consider.

11. Sustainable Development Commission -

One idea calls for the establishment of a "Sustainable Development Commission" to which all United Nations bodies, agencies and programmes as well as the "treaty" secretariats involved in the area of environment and development would be accountable. It would meet annually and examine policies and programmes for promoting global action on environment and development and would be both a political deliberative body and coordinating mechanism for the United Nations system's activities in this area. It could also be convened on an emergency basis to deal with environment-related disasters and crises. Although such a Commission has been likened to the Commission on Human Rights, its exact terms of reference and its hierarchical place within the structure of the United Nations system remain to be defined.

12. Policy Overview and Integration -

A number of other proposals have been made for establishment of a high-level deliberative body at the political level which would provide a forum for overview and policy coordination of environment issues and their integration with other major issues to which they relate in the security, economic, social, humanitarian and commons areas. Some suggest that this be done through establishment of an "Environmental Security Council"; or a Committee of the General Assembly, supplemented, perhaps, by a special committee of the Security Council to deal with the issues which are security-related. It is also suggested that these functions could be performed by according to the Trusteeship Council a new mandate as the forum in which Member States exercise their trusteeship for the integrity of the global environment and commons.

13. Economic Security Council -

An earlier proposal calls for the creation of an "Economic Security Council" composed of around 24 members, representing all groups of Member States, as the centrepiece of the "economic United Nations" parallel and equal to the "political United Nations". The Council would be supported by:

- an interdisciplinary central secretariat with a large staff of highly qualified experts; and

- a number of smaller sectoral secretariats maintained at the level of each of the agencies.

The Council would bring together the competent ministers, depending on the problems on the agenda, and the central secretariat would be led by a group of independent persons (commissioners).

14. International Development Council -

Another proposal, emanating from the Nordic project on the "United Nations in Development" calls for the creation of an "International Development Council" within the United Nations to meet the need for a high-level forum for member states to discuss development issues and give overall policy guidance for the United Nations operational activities for development. If this concept were enlarged to include the integration of environment and development it would come very close to the proposal referred to in paragraph 11 above for establishing a "Sustainable Development Commission".

15. Revitalized Economic and Social Council -

In principle, most if not all of the functions envisaged for the proposed new intergovernmental mechanisms referred to above could be undertaken by ECOSOC, although it is clear that in order to do so there would have to be a very significant improvement in its credibility and strengthening of its effectiveness. Reform of ECOSOC has been the subject of perennial discussion which has, unfortunately, not produced significant results. The conditions may now be much more conducive to reform and strengthening of ECOSOC, particularly in light of the results of the resumed forty-fifth session of the General Assembly (paras. 4-6 above) held in New York in April 1991.

16. The Stockholm Initiative -

The Stockholm Initiative on Global Security and Governance which was held last April has proposed that a World Summit on Global Governance be convened similar to the meeting in San Francisco and at Bretton Woods in the 1940s. To prepare the ground for such a summit the participants in the Stockholm Initiative called for the establishment of an independent International Commission on Global Governance as a matter of priority. Whether the Commission is initiated by the United Nations through a decision by the General Assembly or otherwise, they stressed that it must be composed of individuals functioning in their personal capacities. The Commission report would become the basis for the deliberations at the World Summit on Global Governance. They also stated in their report that until such a summit can be convened (in 1995, the fiftieth anniversary of the United Nations?) "the Commissions work, together with the preparations for UNCED, will also contribute to the discussions within the United Nations on these issues".

V. Secretariat

17. As stated above, efforts at reforms especially by the General Assembly and the ECOSOC have concentrated on changes in respect of intergovernmental institutions. There has been less serious consideration of reforming the secretariats of the United Nations itself and those of its agencies and programmes, although a number of constructive changes have been made by the Secretary-General. On the basis of both mandates and experience, it is, at least in principle, much easier to bring about desirable changes at the secretariat level. The Charter gives the Secretary-General considerable authority in the administrative area although some of the prerogatives of the office have been eroded in practice over the years.

18. A great deal of streamlining and more effective coordination of United Nations activities in the environmental and development area could be achieved through secretariat reforms, some of which may require simple endorsement by the General Assembly. Indeed, it is difficult to envisage the achievement of the elusive goals of priority setting and coherent system-wide and coordinated programming and monitoring without a leading role by a revitalized secretariat. A number of ideas and proposals have recently been advanced on the subject of organization of the secretariat which are relevant to the issues being addressed by UNCED.

19. The report of the World Commission on Environment and Development, "Our Common Future", points to the "need for a high-level centre of leadership for the United Nations system as a whole with capacity to assess, advise, assist and report on progress made and needed for sustainable development. That leadership should be provided by the Secretary-General of the United Nations ... who should constitute under his chairmanship a special United Nations Board for Sustainable Development". The principal function of the Board would be to agree on continued tasks to be undertaken by the agencies to deal effectively with the many critical issues of sustainable development that cut across agency and national boundaries. In this context proposals have also been made for the revitalization of the Environmental Coordinating Board.

VI. Evaluation and Review

20. Adoption by UNCED of Agenda 21 would need to be accompanied by a decision on a process for review and evaluation of performance and identification of new needs and priorities. At the political level, these functions could be performed by any one of the intergovernmental mechanisms proposed above as one of its most important responsibilities. As the broad institutional reform required for strengthening the integration of environment and development at the intergovernmental and secretariat levels may not be put in place until some time after the 1992 Conference, it may be necessary to consider interim arrangements. This could take the form of periodic review by the United Nations General Assembly and its subsidiary bodies, supported by interim secretariat arrangements.

21. It may also be useful in this event to consider a specific ad hoc process of evaluation and review of Agenda 21 and other decisions taken at UNCED at a reasonable interval following the Conference.

22. Closely related to this is the proposal that an entity be established independent of the United Nations but with its blessing and cooperation to provide objective and authoritative evaluations of important environment, development and related issues, including periodic review of progress in respect of implementation of Agenda 21, point up gaps in performance as well as new needs and priorities and "early warning" of impending risks and opportunities. In addition to performance information on activities underway or planned as part of Agenda 21, this would also call for the best available scientific knowledge and data and information available from such sources as UNEP's GEMS, Infoterra and GRID programmes, and UNDP Human Development Index. This material could be reviewed by a relatively small independent organization drawing on the scientific and intellectual resources of research institutions

and important scientific bodies like the International Council of Scientific Unions (ICSU) and the World Conservation Union (IUCN). Its reports and recommendations would provide an important basis for the deliberations of the intergovernmental body.

VII. **Risk Assessment Capacity**

23. Decision-making at the political level on environmental matters often has to take place in the face of scientific uncertainty or even scientific dispute.

24. Many sources of data and information are limited to particular sectors or phenomena which provide important, but only partial, elements of what is happening in the total cause and effect system of which they are part. Also, in some cases, they may be constrained by political or industry considerations that could call into question their objectivity. This can produce misleading or discordant signals to policy makers and the public which do not provide a sound or adequate basis for policy and decision making. The early signs of emerging environmental risks are often likely to be inconclusive and controversial. Yet it is often at these early stages that policy makers and the public need the benefit of the best possible scientific and expert guidance to avoid the dangers either of premature or ill-founded responses or the other extreme of unwise delay in responding which may compound the risks involved.

25. An Environmental Review Commission, or similar entity, could be accorded the responsibility to review and evaluate data and information from all principal sources in the context of the overall cause and effect system and provide objective assessments, guidance and "early warning" to the world community, through the United Nations. The Intergovernmental Panel on Climate Change demonstrates the usefulness of such an exercise. But it is not in itself a prototype for this proposal as it combines the intergovernmental with the expert mechanisms. (Such a combination may be more relevant when a technical evaluation is to support a specific negotiating process.)

26. An independent, objective mechanism of this kind could be established with the support of governments and private sources and the active cooperation of such organizations as ICSU and IUCN. It would not need to have a large staff of its own but rather could operate on the basis of convening review and assessment panels, drawing on the best scientific, professional and policy institutions and expertise. It would deal with issues it believes are important as well as responding to requests from the United Nations, from other intergovernmental bodies, governments and non-governmental organizations.

27. The World Commission on Environment and Development pointed out that while a good deal of work is being done in this area, "there is no recognized international non-governmental centre of leadership through which the efforts of these groups can be focused and coordinated". It recommended the establishment of a Global Risks Assessment Programme designed to carry out the kinds of functions contemplated above which would function as a mechanism for cooperation amongst largely non-governmental, national and intergovernmental organizations, scientific bodies and interested groups.

VIII. Environmental Emergencies

28. The number and scale of environmental emergencies has been increasing and is likely to increase substantially in future. There is a strong likelihood of more Bhopals, Chernobyls and Valdez-type oil spills. And the massive oil spill and oil-well fires which were the products of deliberate acts of conflict in the recent Persian Gulf War point to the need for stronger international mechanisms to prevent such tragedies as well as more effective capacities for responding to them.

29. There are other emergencies, such as famine and natural disasters, which may be related to or compounded by environmental factors and while the capacity of the United Nations to respond to such emergencies also needs strengthening, this can perhaps best be done by changes in the existing machinery rather than through a new environmental emergency response system.

30. Emergencies that are directly environmental in character, e.g. oil spills and large emissions of toxic or radioactive substances, are diverse both in their nature and causes and in the locations in which they may occur. Accordingly, they do not lend themselves readily to a highly-centralized response capacity. The principal requirement is for a greater capacity within the United Nations to identify the best capabilities available in various parts of the world of the kind required to deal with the emergencies most likely to occur, make arrangements to ensure the availability of such capacities and, in cooperation with relevant national and regional entities, monitor and be capable of rapidly mobilizing appropriate and effective responses to emergencies as they occur. At the forty-fourth session of the General Assembly, during which the Assembly approved resolution 44/224 of 22 December 1989 in which it, inter alia, recognized the need to strengthen international cooperation in monitoring, assessing and anticipating environmental threats.

31. The Government of the USSR has proposed the setting up of a Centre for emergency environmental assistance and the Government of Switzerland has offered to provide host facilities for such a centre. By its decision 16/9 of 31 May 1991, the Council endorsed UNEP's Executive Director's proposal to proceed with the development, on an experimental basis, of a United Nations centre for urgent environmental assistance, acting in close cooperation and in coordination with other United Nations agencies, focusing on assessment of and responses to man-made environmental emergencies. The mechanism would maintain rosters of experts and a list of appropriate equipment to be used in such emergencies, ensuring that that did not duplicate the existing activities and responsibilities under existing international treaties and of other United Nations bodies in those fields and that it maintained proper liaison with them.

IX. National and Regional Capacity Building

32. One of the principal constraints on the development progress of developing countries, as well as on their ability to participate fully in international environmental and related development cooperation, is the inadequacy of their scientific, technological, professional and related institutional capacities. This subject is dealt with more fully in document

A/CONF.151/PC/53. It envisages establishment of a "sustainable development and technology support system" in each of the developing regions to strengthen and support the further development of and cooperation amongst indigenous institutions and programmes. It could function within the framework of the Sustainable Development Networks being established on the initiative of UNDP and link the institutions required to support sustainable development in the countries of the region together so that each can benefit from the knowledge, experience and capacities of the others. Linkages could also be established with other regional networks as well as with institutions and sources of information and support in industrialized countries. To ensure the effective functioning of these systems coordinating centres would have to be established, either in existing or new institutions, in each region or sub-region.

33. A proposal along these lines is being developed in cooperation with UNDP, the Regional Development Banks, UNEP, the United Nations Economic Commissions in each region and other regional, sub-regional and United Nations organizations and agencies.

X. Other National and Regional Institutional Needs

34. Implementation of Agenda 21 will also require strengthening of and additional support for regional organizations and intergovernmental fora in each region and particularly the mechanisms required to ensure effective coordination and cooperation. However, the international institutional mechanisms, at both global and regional levels, are primarily based on and supportive of the related institutions at the national level. Implementation of Agenda 21 will require substantial institutional changes and strengthening at the national level.

35. Recommendations in respect of institutional issues at the regional level and national level cannot be fully considered until the Preparatory Committee has been able to take full account of the decisions to be made in respect of the issues being considered by its Working Groups, the recommendations of the regional preparatory conferences and, of particular importance, National Reports.

XI. Cooperation with bodies outside the United Nations

36. While the United Nations must of necessity play a central role in this process, it is evident that any continuing programme designed to achieve sustainable development cannot be confined to the United Nations system. The central task of the United Nations is to mobilize and coordinate inputs not only from within the United Nations family of organizations and programmes, but also those of IGOs and NGOs outside the system, the scientific community, business, labour organizations, and other important sectors and constituencies. It should be noted in this regard that the Working Party approach adopted by the UNCED secretariat has demonstrated the value of this and has worked well in integrating the inputs of all concerned agencies and organizations in the preparatory process. This experience has some important lessons for the follow-up to the Conference, particularly in monitoring and reporting on the implementation of Agenda 21. Indeed, in the light of UNCED experience thus

far, perhaps the time has come for a major review of how the United Nations can relate more effectively on an ongoing basis to these important actors outside the system.

XII. Concluding Observations

37. As stated in paragraph 8 of A/CONF.151/PC/36, the extensive range of institutional issues involved in the UNCED process have to be considered in the context of the broader need for organizational reforms of the economic, social and related fields of the United Nations system which have been the subject of a great deal of study and dialogue in recent years and in particular recently in relation to the resumed session of the United Nations General Assembly held in April 1991. It is unlikely that any of the proposals cited above for significant overall reforms in the United Nations system, whether at the intergovernmental or secretariat level, will be instituted or even crystalized by the time of the Earth Summit next year. Accordingly, the Preparatory Committee's recommendations to UNCED on institutional arrangements can have an important impact on the United Nations system as a whole and influence the debate and decisions on overall restructuring and reforms of the system.

38. One question of fundamental importance in respect of UNCED is: which unit of the United Nations Secretariat will have overall responsibility under the authority of the Secretary-General for monitoring, reviewing and reporting the progress on the implementation of Agenda 21 and to which intergovernmental organ or organs should it report? There is at present no movement towards the creation of a separate new organization to deal with the integration of environment and development. It must, therefore, be based on modification and strengthening of existing structures and arrangements.

39. Finally, the importance of the National Reports and the reports of the regional preparatory conferences cannot be underlined too strongly. The institutional aspects of these reports at the national and regional levels must be taken fully into account by the Preparatory Committee in formulating its recommendations on institutions.